

MOTION FILED
MAR 23 1978

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1255

HARRY B. HELMSLEY, ET AL.,

Appellants,

vs.

THE BOROUGH OF FORT LEE, ET AL.,

Appellee.

AMERICANA ASSOCIATES, ET AL.,

Appellants,

vs.

THE BOROUGH OF FORT LEE, ET AL.,

Appellee.

NEW JERSEY REALTY COMPANY, ET AL.,

Appellants,

vs.

THE BOROUGH OF FORT LEE, ET AL.,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

MOTION FOR LEAVE TO FILE BRIEF

AMICUS CURIAE

AND

BRIEF OF AMICUS CURIAE NATIONAL APARTMENT

ASSOCIATION IN SUPPORT OF JURISDICTIONAL

STATEMENT OF APPELLANTS.

JOHN C. WILLIAMSON

General Counsel

MICHAEL L. SOLOMON

Associate General Counsel

National Apartment Association

1825 K Street, N.W., Suite 604

Washington, D.C. 20006

IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

No. 78-1255

HARRY B. HELMSLEY, ET AL.,
Appellants,

vs.

THE BOROUGH OF FORT LEE, ET AL.,
Appellee.

AMERICANA ASSOCIATES, ET AL.,
Appellants,

vs.

THE BOROUGH OF FORT LEE, ET AL.,
Appellee.

NEW JERSEY REALTY COMPANY, ET AL.,
Appellants,

vs.

THE BOROUGH OF FORT LEE, ET AL.,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

**MOTION FOR LEAVE TO FILE BRIEF AS
AMICUS CURIAE**

The National Apartment Association (hereinafter NAA) respectfully moves this Court for leave to file its brief *amicus curiae* in support of Appellants' jurisdictional statement.

The NAA is a nonprofit trade association representing developers, builders, owners, operators and managers in the apartment rental industry.

Rent control affects members of the N.A.A. throughout the nation. Presently, rent control statutes exist in over 200 communities in the following states: California, Florida, Washington, D.C., New Jersey, Massachusetts, and New York. As inflation continues, the pressures for rent control in other communities will increase.

As a national organization concerned with rental housing, we respectfully request an opportunity to file the annexed brief *amicus curiae*.

Amicus sought consent of appellants and received oral consent from Mr. Martin Kesselhaut for Appellants. However, the Appellee refused.

Respectfully yours,

JOHN C. WILLIAMSON

General Counsel

MICHAEL L. SOLOMON

Associate General Counsel

National Apartment Association

1825 K Street, N.W.

Suite 604

Washington, D.C. 20006

TABLE OF CONTENTS

	<u>Page</u>
Table of Cases	1
Question Presented	2
The Federal Question is Substantial	2
Conclusion	3

TABLE OF CASES

<i>Bowles v. Willingham</i> , 321 U.S. 503 (1944)	2
<i>Nebbia v. New York</i> , 291 U.S. 502 (1934)	2
<i>Woods v. Cloyd W. Miller Co.</i> , 333 U.S. 138 (1948)	2

IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

No. 78-1255

HARRY B. HELMSLEY, ET AL.,
Appellants.

vs.

THE BOROUGH OF FORT LEE, ET AL.,
Appellee.

AMERICANA ASSOCIATES, ET AL.,
Appellants.

vs.

THE BOROUGH OF FORT LEE, ET AL.,
Appellee.

NEW JERSEY REALTY COMPANY, ET AL.,
Appellants.

vs.

THE BOROUGH OF FORT LEE, ET AL.,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

**BRIEF OF AMICUS CURIAE NATIONAL APARTMENT
ASSOCIATION IN SUPPORT OF JURISDICTIONAL
STATEMENT OF APPELLANTS**

The statement of the Case as set forth in Appellants'
Jurisdictional Statement is incorporated by reference.

QUESTION PRESENTED

Whether the enactment of municipal rent control ordinances by the Borough of Fort Lee, New Jersey in the absence of a national emergency is an arbitrary and unreasonable restriction of property violating the due process clause of the Fourteenth Amendment of the United States Constitution.

THE FEDERAL QUESTION IS SUBSTANTIAL

A determination of the question of whether the Fort Lee rent control ordinances, enacted in the absence of a national emergency, are an arbitrary and unreasonable restriction of property in violation of the Fourteenth amendment will affect not only the Fort Lee ordinances, but all of the rent control statutes throughout the country. Presently, over 200 municipalities have rent control statutes, and many more are being considered.

Though this Court has considered rent control valid in emergencies resulting from war, *Bowles v. Willingham*, 321 U.S. 503 (1944) and *Woods v. Cloyd W. Miller Co.*, 333 U.S. 138 (1948), it has never considered whether rent control may be enacted in the absence of a war-related emergency.

Thus, the question before this Court is a substantial federal question never before considered by this Court.

Property may be regulated to promote the public welfare as long as the law is not unreasonable, arbitrary or capricious, and the means selected has a real and substantial relation to the object sought to be attained. *Nebbia v. New York*, 291 U.S. 502 (1934). In the instant case the New Jersey Supreme Court upheld the validity of the

Fort Lee ordinance by finding that the governing body could rationally conclude the need for rent control due to a housing shortage. However, it is a basic fact of economic law that rent control does not relieve a rental housing shortage, but further aggravates it. (See Findings and Determinations of Judge Harvey Smith, Appendix C, page 55(a) of Appellants' Jurisdictional Statement.) Consequently, in the instant case, and in all rent control cases except in a national emergency, there is no rational basis to impose rent control for the sole reason of a housing shortage.

CONCLUSION

Probable jurisdiction should be noted as the federal question presented is so substantial as to require plenary consideration with briefs on the merits and oral argument for their resolution.

Respectfully submitted,

JOHN C. WILLIAMSON
General Counsel

MICHAEL L. SOLOMON
Associate General Counsel
National Apartment Association
1825 K Street, N.W.
Suite 604
Washington, D.C. 20006

March 23, 1979